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# MEXICAN FEDERAL ADMINISTRATIVE LAW\*

DAVID CASARES N.\*\*

## INTRODUCTION

In this article sociological considerations must necessarily take a secondary position. It is, however, appropriate as a matter of introduction to mention that the history, the social, political and juridical traditions, and the mode of life of each country greatly influence the development of its legal institutions. Without any question of superior or inferior peoples being raised, one must take account of the fact that each different people will create a different juridical system. Each system will have its own inherent characteristics and particular developments. Each will reach results in its peculiar fashion. The system is adapted to the needs and vicissitudes of the particular country, and it is controlled, among other factors, by the rate of progress in that country. Although the entire system may be founded on the high principle of human liberty and dignity, and even though it provides in general terms that the relationships between men be governed by justice, both as to the individuals and to society at large, the institutions that give life to these various general rights will be as diverse as the environment in which they are applied is diverse.

This diversity in the means of satisfying the needs of the members of society does not necessarily indicate a preference for one possible solution as against another. The basic notions that all men are fundamentally equal and that each is entitled to the fruits of his labor, plus the practice within a given legal system and experience in certain cases in other legal systems create a valuable sense of tradition which may become applicable, to a certain extent, in a different environment. Mexico is an example of the fashion in which these general ideas may function. It is a weak and relatively poor country that suffered from more than a century of political turmoil. Its people face the task of merging two races, the Spanish and the Indian. The former has the burden of assimilating the latter into western civilization, its mode of life, and its other juridical patterns. All of this makes Mexico a day-to-day complex crucible wherein these various influences are melted down and a new tradition formed. Mexico inherited her basic juridical tradition from Spain at a time when Spain was decadent. In spite of this decadence during the period of Mexican independence Spain had known the splendor of the 16th century, when its jurists com-

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piled and saw enforced in the new world the wise and adequate Laws of the Indies. Many centuries earlier it had also produced that monument of scientific legal compilation known as "Las Siete Partidas."<sup>1</sup>

Since the basic Spanish legal tradition brought to Mexico was vigorous and well developed, its life, during the many centuries of Spanish dominion in the new world, went through various modifications. During the Colonial period, especially in the 18th century and the early part of the 19th, as well as at the time of declaration of Mexican independence, the French ideas were propagated and came to have a very important influence on both private and public law. This is particularly true of those notions developed during the time of the French Revolution. While it was not the only influence that can be observed in the codification of Mexican Civil Law after the independence, the Napoleonic Code is without any doubt the clearest and strongest single system of legal ideas contained therein. From the same group of French theorists the leaders of the Mexican Republic drew their knowledge of the notions elaborated in the former English colonies, now established as the United States of America. These ideas came to play an important part in the legal thinking of Mexico. There is no question but what the brilliant course of the new American Republic quickened in Mexico the desire for liberty. After the failure of the ephemeral Empire of the liberator Iturbide, the first constitution, that of 1824, created a republican, representative, federal government. This government, democratic in notion and republican in form, represented an entirely new idea to a country which had functioned during the entire Viceroyalty on monarchical and centralized bases. It was unfortunate that these institutions should have been adopted in a country where the inhabitants had had no experience of participation in a representative government. After a struggle that lasted nearly half a century, during which federalism and centralization were the two main ideas contending for power, the Federal Republic finally came into existence on the basis of the Constitution of 1857. This Constitution, established on the ashes of the frustrated Empire of Maximilian of Hapsburg, followed the general pattern of the Constitution of 1824. Among its many innovations, it created the famous constitutional proceeding known as the "juicio de amparo." The *juicio de amparo* is a combination of habeas corpus and injunction, which may be had in the courts to secure protection from a violation of any right guaranteed in the Constitution to the individual citizen. This is a truly Mexican innovation in spite of some similarities to the common law extraordinary writs.

The revolution that overthrew the lengthy regime of Porfirio Diaz

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1. The Siete Partidas, or Seven Parts, was a compilation of the emerging new national law of Spain by Alfonso the Wise. He was the king of Castile and Leon during the second half of the 13th century. This codification had its roots in the Roman law, but shared, to a very large extent, the common Germanic tradition established in Spain by the Visigothic invaders.

brought into being the present Constitution of Mexico, that of 1917. Although this document has many new ideas, particularly in the fields of social, property, agrarian and labor law, it is very similar to that of 1857 and continues the political tradition springing from the Constitution of 1824.

It is unnecessary to insist on the importance of the influence of American institutions upon Mexican constitutional developments. The administrative law, notwithstanding some differences in rate of development, actual organization and procedure, takes its chapter heads from the constitutional law. This was pointed out by the very learned French author Bonnard.

#### ADMINISTRATIVE ORGANIZATION

For purposes of studying the administrative organs, let us adopt, at least provisionally, the formal definition that is given the administrative function without considering its particular content. This definition is that the function of administrative law in general is "the activity which the state realizes through the executive branch of government." This simple definition has been criticized on the basis of the fact that in certain countries it ignores the extreme decentralization which caused the President's Committee on Administrative Management, in the United States, to remark that "the independent regulatory commission constitutes a headless 'fourth branch' of the Government, a haphazard deposit of irresponsible agencies and uncoordinated powers."

The federal system that exists in Mexico establishes coordinate government in the federal and state areas, each being organized in a republican fashion, democratic and representative, and each containing the usual separation of powers: legislative, executive and judicial. The states are independent as to all that concerns their internal affairs, but subordinate to the federal power in that which is established as pertaining to the union. Article 124 of the Federal Constitution establishes the different areas of jurisdiction as between federal and state authority. It provides that all powers not expressly vested by the Constitution in the federal authorities are reserved to the states. Hence, since the general Constitution establishes a separation of powers for both federal and state governments, it is clear that the executive branch in the states, as well as in the central government, must perform administrative functions. The separation of power established in the Constitution does not mean that the federal executive has an exclusive monopoly on executive acts, nor that it is impossible for it to intervene in functions that are really legislative or judicial. The functions have been coordinated and the various branches of the government collaborate, and in effect have worked out a regime of separation where the practical content of the various acts of the differing public

powers does not coincide with the theoretical distribution into the three coordinate branches.

According to the Mexican Constitution the government must be based on the powers expressly stipulated in the Constitution itself. It is impossible that any authorities other than those envisioned by the Constitution can be created under the Constitution. The second important principle is that all the various branches, and consequently all authorities established under them, have only the powers which the Constitution and the laws made in pursuance thereof grant them. This grant must be either express or reasonably implied. The third important principle is that a discretionary power is an exception, while the normal rule is that the executive may only act within the terms of express powers. As a result of this principle of strict constructionism, the head of the executive and his auxiliaries in the administrative branch can act solely in compliance with the Constitution and within the limits of the laws made thereunder. It is only in the light of this general notion of a rigidly developed constitution, that that which will follow can be understood.

#### FORMAL CLASSIFICATION OF ADMINISTRATIVE ACTS

In the broad sense administrative acts are all manifestations of the knowledge or the will (*actos de conocimiento o de voluntad*) of the administrative organs which produce a juridical effect—that is, acts which create, modify or extinguish obligations, rights, or simple lawful situations. If this definition is examined more closely, it will be seen that in this sense regulations as well as decrees are acts of administration since both emanate from the executive branch. It is submitted that Barthélemy's idea that they belong in the administrative category is correct because their purpose is "to insure order and procure the performance of the laws." Notwithstanding the general character of administrative regulations, their main function is to delineate the law and to guide in its development so that it will realize the basic object of all legislation—the proper functioning of society in all its branches. In contradistinction to this notion of Barthélemy, which I share, the abstract and general character of administrative regulations has led many of the modern theorists to say that they are more in the nature of "law." The fundamental notion of a law is that it consists in the supposition by the legislature of an abstract situation and the attribution of certain juridical effects to the control of that case from the societal standpoint. These theorists hold that it has the character of a legislative enactment even though it emanates from an administrative organ and is formally labeled administrative.

Due to the tremendous importance that the regulation plays in the administrative law, it should be given special consideration. Since regulations are provisions of a general character serving as an instrument for the application of a law, it has been suggested by some that there is little

object in adding one abstract provision to another of the same kind. However, if one takes into account the fact that the legislative power is vested in a congress, divided into two chambers, meeting only intermittently, and having a deliberative purpose underlying its general work, the need for regulations becomes obvious. Usually, and it is convenient that this is true, laws do not enter into the minute fashion in which they may be applied, because the legislators do not have an immediate experience with the practical enforcement of the law. It is also because they are attempting to establish an abstract or general principle which appears reasonably calculated to accomplish the end that they have in mind. The regulation then is to assist in the execution of this general idea called a law. The regulation permits the purposes of the authors of the law to be realized, giving the manner of enforcement a sufficient flexibility, and at the same time a general fairness and uniformity. There is in addition the factor that the administrator is supposed to be an enlightened and highly trained person with direct and continuous association in the practical execution of any legal enactment. It is socially desirable that the general body of the law be stable and lasting. Constant amendment of the fundamental law constitutes a great evil due to the disturbances produced by innovations in the social relationships. The administrative regulation contributes to the stability and general fairness of the law because a regulation may be rapidly changed and, while respecting at all times the principle established in the law, adapts it to the changing conditions of society through the manner of applying it. The legislative function would be extremely difficult, if not possibly sterile, oppressive and dangerous, if it did not have the assistance of the administrative regulations.

#### CONSTITUTIONAL BASIS OF THE ADMINISTRATIVE LAW

Article 92 of the Federal Constitution makes it clear that the President has the power to enforce the laws through regulations when it states: "All regulations, decrees, and orders of the President must be signed by the secretary of the executive department to which the matter pertains. . . ."<sup>2</sup> However, this leaves unsolved the question whether the President is capable of acting without specific authorization by the legislative branch of the government. Mexican constitutional historians now agree that the head of the executive branch is authorized to dictate regulations without the necessity of a special order from the legislative branch in each case. This doctrine is taken from Section 1 of Article 89 of the Constitution, which grants the President the power "to promulgate and execute the laws enacted by Congress, providing within the administrative sphere for their faithful observance."<sup>3</sup>

The expression is not a happy one and the following background is

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2. 2 PEASLEE, *CONSTITUTIONS OF NATIONS* 443-444 (1950).

3. *Id.* at 442.

needed in order to understand it. The history of the Constitution shows us that the earlier provisions contained in Article 85, Section IV, of the so-called Organic Bases of 1843 had a far clearer and more precise statement of the function of the President in this regard. It stated: "The President of the Republic shall issue orders and regulations necessary for the execution of the laws, without altering or modifying them."

Inexplicably, when the Constitution of 1857 was drawn up, this excellent statement contained in the Organic Bases was forgotten and for it the present formula, contained in the Constitution now in force, was substituted. The expression, "execute the laws enacted by Congress providing, within the administrative sphere, for their faithful observance," serves to explain the theoretical development of the administrative regulation in Mexico in the following regards:

- (a) The nature of the power to issue regulations.
- (b) The need of a specific law in order that this power exist, with the sole exception of police regulation.
- (c) Restrictions on the power to issue regulations.
- (d) The fact that this grant of power to issue regulations is a constitutional one.

Each of these four subdivisions of the general nature of administrative regulation will be discussed.

As to (a): In some countries, among them the United States, it has been maintained that administrative regulations, due to their abstract nature, are really laws enacted by the executive under a general delegation of legislative authority. The text of the Mexican Constitution makes this rationalization impossible. Article 49 of the Constitution expressly provides: "The supreme power of the federation is divided into the legislative, executive and judicial branches. Two or more of these powers cannot be united in one person or corporation, nor can the legislative authority be vested in one individual, except in the case of extraordinary powers delegated to the executive in accordance with the provisions of Article 29. In no other case shall extraordinary powers be granted to the executive to legislate."<sup>4</sup>

The exception mentioned in Article 29<sup>5</sup> is that of an emergency arising from an invasion, a serious disturbance of the public peace, a serious internal danger or social conflict. In such an event Congress may, by means of a law, suspend certain individual guarantees and authorize the President to dictate general measures necessary to control the situation rapidly and easily. It is necessary to allude to the last sentence of the aforementioned Article 29. This sentence incorporates an amendment made in 1938 with the specific purpose of ending the vicious congressional practice of delegating extraordinary legislative power to the President to

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4. *Id.* at 431.

5. For full text see 2 PEASLEE, *op. cit. supra* note 2, at 427.

legislate on certain subject matters without there being an emergency. This delegation was based on the broad notion that the legislature retained its general power since it had only delegated certain specific powers, and that the specific power delegated did not merge in the person of the President, nor did it become vested in him. There is no question but that the amendment of Article 29 was necessary due to particular Mexican circumstances. It is, therefore, clear that the United States' rationalization of the administrative function is not possible because of the express prohibition in the Mexican Constitution. The division of powers appears to be absolute.

Article 89 shows that although the making of regulations has its legislative side, the division of the various branches is not so inelastic as to keep from the Chief Executive all power to make regulations. That is precisely why the Constitution draws a distinction between the making of laws and the execution of the laws already made. The formula that is employed differentiates these two things very clearly, and hence the President is empowered to use adequate means to obtain the proper observance of the laws. The most adequate means to accomplish this is in the administrative branch of the government through detailed determination of the mode and circumstances for compliance with the general legislative purpose.

As to point (b) above, the language used in Article 89 makes it clear that, although regulations resemble laws greatly, the regulation requires a prior law in order to exist. Regulations do not impose obligations or grant rights. They cannot increase or restrict the legitimate sphere of action of private individuals since the function of making laws which can so affect the rights of individuals is reserved to Congress by the Constitution. This reservation is contained in Article 73,<sup>6</sup> where it is set forth that Congress alone has the power to legislate. It is even more clearly expressed in the various articles containing the fundamental basic rights of individuals where the only possibility of limiting said rights is reserved to laws<sup>7</sup> and only in certain instances may such a limitation be made even in the form of a law. What this means in plain language is that, in addition to the obligation of the President to respect the Constitution, the enforcement of that Constitution is provided for in the general laws made by the Legislature, and the enforcement of the laws made by the Legislature is provided for in the administrative regulations made by the Executive. To this constitutional provision that it is a function of the Legislature to determine the cases and conditions for the enforcement of general precepts and the

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6. It is contained particularly in §§ VI and XXX and by implication in all the other sections. See 2 PEASLEE, *op. cit. supra* note 2, at 435-439.

7. For the basic civil liberties see those contained in Art. 1, 4-10; and the due process clauses in Art. 14 and 16. 2 PEASLEE, *op. cit. supra* note 2, at 415-418. See also n. 11 *infra*. The text of Art. 14 is at n. 12 *infra* and that of Art. 16 at n. 13 *infra*.



method of putting into effect the legislative mandate, there is only one exception. This is contained in the provisions that permit the making of police-type regulations. Since these may be made directly by the Executive without the intervention of the Legislature, they are denominated autonomous regulations. Article 10<sup>8</sup> prohibits the carrying of arms within inhabited places without complying with police regulations. Article 21<sup>9</sup> allows the administrative authorities (executive, municipal, etc.) to punish non-compliance by fine or detention for a period not exceeding 36 hours.

Some authors, as mentioned above, are of the opinion that the administrative regulation bears the same relationship toward the law as the latter does toward the Constitution. If the notion is accepted that the Constitution is nothing but an empty formula without specific purpose, limited to defining "the competence of the various powers," then it is impossible that the relationship of law to Constitution is the same as that of regulation to law, because the Constitution would not envision any end whereas the law would. If, however, it is seen that the Constitution is the means for defining the nature of the State and that among its other purposes it has that of setting forth the reasons for the existence of the State, then it can be seen that the laws do nothing but set forth in greater detail the ends which the State must achieve in each branch of government through activity of a specific nature, and that the regulations develop these ends to their ultimate consequences.

As to (c) above: In dealing with the question of the restrictions of the power to issue regulations, Section I of Article 89 makes it clear that certain limitations exist. If in issuing the regulation the President is obligated to provide for the exact observation of the law, then it is impossible for any regulation to contradict, expand or restrict the content of a law or to attempt to achieve an end different from the one stated in the legal enactment. This is made very clear by the content of Article 72(f),<sup>10</sup> which provides that "The same formalities as are required for the enactment of laws shall be observed in their interpretation, amendment or repeal."

The matter of the nature of the limitations of an administrative regulation is not, however, as simple as this. Many times the law is very succinct and, in order to execute it, the regulations must necessarily place restrictions on the rights, must set forth specific obligations or grant powers which are not expressed in the law. The prevailing theory in Mexico today, established by the jurisprudence (decided or settled case law) of the Supreme Court, gives two basic principles for judging the constitutionality of such a regulation: the first deals with the nature of the law itself and the second with the nature of the regulation. The law, in order to be capable of

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8. 2 PEASLEE, *op. cit. supra* note 2, at 417.

9. *Id.* at 420.

10. *Id.* at 435.

administration through regulations, must state precisely all of the fundamental elements of fact to which a judicial consequence is to be attributed. Thus, at least the fundamental criteria must be established as well as the means for taking legal action on the basis of said criteria.

An example may be taken from the field of taxation. If the object of the tax, the fact that it is taxable and the rate are not specified, the law cannot be administered. It is not sufficient to state that one must pay a tax if the purpose or reason for paying the tax and the quantity of the tax are not stated. These last elements are absolutely requisite in order that the executive branch may proceed to collect it. If they are not stated, the latter would then have to complete the element of the law that had been omitted, and this has been ruled by the Supreme Court to be the equivalent of legislating.

The nature of the regulation must be such that it respects the spirit of the law and works along with it. The regulation must assume its various hypotheses and establish the means of compliance with the law. This may be done either directly or indirectly as long as the understanding and action of the Executive is reasonably in accordance with the main purpose of the law. Again let us take an example from the field of taxation. The law taxes the execution of a certain type of contract in a fixed quantity, payable by both contracting parties. There is thus a stipulation as to who and how much must be paid. Nothing has been stated as to the means of payment. The regulation can validly establish that the tax may be paid either in cash or in tax stamps. The regulation might establish that notice be given to the office of the tax collector, since the tax collector will have handled various other cases envisioned by the same law and he may have established general routines for the collection of the various types of income entrusted to him. It would not authorize the President, however, to bring in new elements conditioning this responsibility to pay taxes foreign to the general objects of the law, nor could he establish greater obligations than those imposed or include more people or more types of contracts than those which are reasonably within the purview of the legislation as literally read.

Finally, consider category (d) which deals with the constitutional nature of the power to issue regulations. The basic point to be stated here is that the faculty of regulation is vested solely in the President of the Republic. The Mexican Congress cannot, as can the Congress in the United States, delegate the power to regulate a particular law to an administrative agency created by the law itself. In such a situation Congress itself would violate the Constitution as clearly as would the President in the making of a regulation entirely foreign to the purpose of a particular law. The power to enforce the laws is exclusively one belonging to the President. There is a corollary which must be stated, and that is that

neither can he delegate the power since the statement contained in the Constitution is an express statement that the President shall see to the enforcement of the laws. It has been resolved by the Supreme Court in its decided case law that "in conformity with our constitutional system, the legislative branch alone has the power to enact laws with the sole exception that the President may exercise his regulatory functions when dealing with police regulations. Also, that the Executive cannot delegate any power given him under a general law unless there exists in the Constitution a provision authorizing him to delegate the power to another person or entity, for not even the Legislature itself can authorize a delegation without the specific authority contained in the Constitution."

This strict construction of the constitutional language by the Supreme Court seriously limits the possibility of administrative decentralization. When the latter becomes more necessary, as it will, the obstacle will have to be removed either by judicial interpretation or by direct amendment of the Constitution.

All of the above should not give the impression that at the present there are not some regulations emanating from decentralized public authorities. Although they may not be called regulations, the circulars of the Bank of Mexico, pursuant to Article 32 of its charter, fix the minimum and maximum rates of interest that private banks are allowed to charge their clients. Under the present rule of the Supreme Court, however, there is a serious question as to the constitutionality of these "circulars." In order for them to survive it will be necessary that the Supreme Court change its rule.

As to circulars in general, it should be added that any orders addressed by administrative officers to their subordinates wherein are stated general measures for the internal administration of the particular matters of their care, pursuant to the laws and regulations, is not an exercise of the regulatory function because they neither establish new rights or obligations, nor do they envision such a possibility. The mere instruction of a subordinate so that he comply in a uniform fashion with the juridical rules established is not an unconstitutional assumption of the regulatory powers.

#### THE THEORY OF THE ADMINISTRATIVE ACT IN MEXICAN LAW

At the outset of this article it was stated that the administrative act in a broad sense is any manifestation of knowledge or will by an administrative organ that produces a juridical effect—that is, that creates, modifies, or extinguishes an obligation, right or a simple lawful situation. Within this definition, which is purely formal and subjective, is included the regulation. The regulation, as has already been explained, is in actuality a legislative function entrusted to the administrative power. In a strict sense, therefore, an administrative act always has the immediacy of a specific execution of a particular law. That is, it establishes a particular juridical effect that must

be derived from that law and must, in its turn, change the nature of obligations, rights or lawful situations.

The administrative act may be divided into the following elements:

1. The authority or person to whom the act is attributed.
2. The declaration of the knowledge or of the will of the authority.
3. The content of the declaration.
4. The reason for the declaration.
5. Its form.

Each of these elements will be considered in detail.

First, the author of the administrative act is always the State through the administrative agency or through any other public or private entity which may have received the authority to perform a particular activity coming within its jurisdiction. Thus, the following can be the sources of administrative acts too; the decentralized public institutions and private individuals in charge of public functions. The latter, however, are included only in certain cases when there is a question of immediate and direct public interest.

In order for the acts of the authority to be valid, it must have jurisdiction. In this sense, jurisdiction is defined as the field of activity, objectively viewed, granted by law to a particular organ of the State. The second precondition for the validity of the act is the capacity of the subject. This consists in either an aggregate of conditions *de facto* or *de jure* such that, in pursuance of the law, the government officer or person in question has the power to make his declaration effective. In accordance with the law, jurisdiction is normally determined by the subject matter, by the territory, and by action at the level of the agency. The capacity of the agent is comparable to that of an individual in private law. Any natural or legal incapacity, such as insanity, or any impediments, such as duress, will be the cause for nullity of the act of a government official just as it would be of a private individual.

The subject matter of an administrative act can be either simple or complex. Acts are simple when they proceed from one entity, regardless of whether the will of that entity is identified with an individual or with a corporate body. They are complex when the manifestations are the aggregate of facts done simultaneously or successively by different administrative agencies, either through the agencies acting alone or in collaboration with private individuals. The normal administrative act is unilateral in the sense that it represents the imposition of the will of the State on the will or wills of an individual or individuals. Although there are times when the validity of the act requires its acceptance by the individuals, it is never bilateral in the sense of the absolute equality which exists in private law; for example, in the making of a simple contract.

In spite of this generalization, there are administrative acts that are

bilateral and even polilateral. Typical of these would be the contracts or compacts between various public entities dealing with each other on an equal footing.

The second aspect of the administrative act is the declaration of the will of the agency. This declaration must always be a voluntary manifestation or external realization of certain legal presuppositions. By its very nature it is susceptible of the same defects as any private voluntary act. Duress, violence, material mistake, fraud or deceit will all vitiate the will of the administrative agent exactly as they do that of a private person. The declarations have a dual aspect. They may become a matter of public administrative law if they treat of a manifestation of will designed to accomplish a certain end known and recognized in the law, or they may be simple administrative acts if they represent merely the expression of will or knowledge having various possible effects, none of which is designed to accomplish any specific end of the law.

The general nature of the manifestation of the will is also divided in two different ways. If it deals with a specific case and proposes a specific sanction, that is, if it is controlled by circumstances which have already occurred—such as the imposition of a fine on one guilty of certain conduct—it is a binding or a vested act. If, however, the nature of the manifestation makes clear that it awaits an opportunity to be applied or that it can only be applied in the event that certain other things happen, it is a discretionary act. The practical consequences of this distinction are incalculable.

The third subdivision with which we deal is the content of the administrative act. This refers both to the nature of the subject matter (health regulations, patents, etc.) and to the type of act, for example, the granting of a concession or the expropriation of a particular piece of property. The object of an act may be either positive or negative; may be within the private law or within the public law. Public administrative acts, it must be noted, in contradistinction to private contracts, are all nominate. The variety and possible number of combinations of such acts is sufficiently small that they may be divided into a specific number of categories.

The enumeration of administrative acts which follows is based on Fraga's adaptation of the classification made by Zambini. First are those designed to increase the juridical or legal capacity of the individual. These include: (a) the granting of access to an institution, organization or professional group, and allowing the person the rights and advantages of this particular service of a public nature (such as the reception of a person into an institution of learning or a public charity); (b) the consent given by a superior to an inferior in order that he may exercise a particular power; (c) the removal, waiver or renunciation permitting non-compliance with an obligation by an individual or granting him leave not to fulfill a requisite generally envisioned by the law in its normal course (such as the reduction

of a tax due to the poverty of the individual taxpayer); (d) licenses, permits or other authorization which makes it possible for the individual to exercise a pre-existing right subject to public control; and (e) concessions. Concessions are divided into those which create status, the constitutive (such as the granting of nationality), and those which transfer a property right, the translativ (such as the giving of the power to perform a public function to a private individual, whether it be the rendering of a service or the exploitation of a property for the public benefit).

The second basic category of public administrative acts is composed of those designed to restrict the legal powers of private individuals. It includes: (a) rules imposed upon individuals such as general prohibitions or orders containing either negative or affirmative obligations; (b) penalties and other forms of enforced execution of administrative acts including suspension or total deprivation of a right due to non-compliance with another administrative order (fines, arrests and cancellation of concessions); and (c) the expropriation or unilateral conveyance of property for the public use. This latter may be total or may be merely a restriction on the ownership, such as a temporary occupation or the creation of an easement in various categories of people with the right of user.

To be contrasted with the two general categories of public administrative business are the simple administrative acts. These produce varying legal effects, but are not aimed at any particular one. Typical of them are acts of authentication, certification, registration and the communication of orders, summonses, declarations and the publications of proceedings in any general category of action. It should be noted that administrative acts are general if they have an abstract character, such as a circular, and they are particular if they are addressed to certain persons, as in the establishment of a concession. They are internal if their effects are limited to the administration itself, and external if designed to have effect on private individuals.

The fourth element in describing the nature of the administrative acts is the purpose for which the act is realized. Generally speaking, the purpose is either immediate or ultimate, but in both senses the administration must, in proposing a given act, be realizing something in the public interest. The definition of purpose has caused a great deal of discussion in Mexican law. It is divided into two parts, the juridical or legal purpose and the natural purpose. The immediate end to be served by the administrative act is called the legal purpose. The more remote or ultimate purpose to be achieved by an administrative act is labeled the natural purpose or, sometimes, the motivation. If the government grants a concession for the exploitation of public property, its immediate purpose is to acquire the obligation of the concessionaire. Its ultimate purpose is to achieve the better exploitation of the public domain. As will be explained hereafter, the term "motivate," in its constitutional sense, has been defined as the particular fact or facts

which induced the administration to act in a particular case. The general element, "purpose," is of great importance when dealing with discretionary administrative acts since, if there is a violation of the purpose in the means used to realize the act, the administrative agency may be guilty of "excessive use of power."

The fifth and final element of the administrative act is the form in which the declaration is issued. This presents serious points leading to the evaluation of its efficacy and its validity. The general rule is that an administrative act must be a solemn act, that is to say, that no administrative act exists unless expressed in the manner provided in the law. It does not go so far, however, as to establish that the administrative act must be sacramental, always employing certain predetermined formulas. Article 16 of the Constitution provides that no person shall be disturbed in his person, house or possessions, except under the authority of a written order,<sup>11</sup> but certain acts may not only be oral, such as a police order in the street, but tacit, based on phenomena that are unmistakable, such as the sound of a siren or a stop-and-go light, if by prior regulation the significance of the siren sound or the stop-and-go light is clear and unmistakable. As an instrument, the act must fulfill certain formal prerequisites, that is, there must be a statement that an opinion has been requested or there must be a statement of the purpose, either *de facto* or *de jure*, envisioned by Article 16, and there must be a signature since we are dealing with an instrument.

Silence itself has no legal meaning and, therefore, to interpret the silence recourse must be had to the law. The law sometimes may provide a negative meaning, at other times an affirmative meaning, and quite frequently no meaning at all.

Article 8 of the Constitution, for example, provides for the right of petition. Its efficacy has been limited, however, to a requirement that the public authority must answer a petition within a very short time. If no answer is forthcoming, the constitutional right of *amparo* may be exercised, but no particular significance is given in that proceeding to the silence of the public authority.

#### THE NATURE OF ADMINISTRATIVE PROCEDURE

The administrative process was called into existence by the manifold requirements of the modern state. The essential nature of the process is that it must act to serve the public interest. The public interest requires speed, informality, a certain secrecy, and a certain responsibility on the part of its officials in carrying out the public administration without obstacle or delay. Taking into account the tremendous power which can be concentrated in administrative agencies, the judicial branch has intervened quite strongly to protect the rights and interests of private individuals, especially in democratic countries where there is a felt need for the harmonizing of

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11. See note 7 *supra*.

efficient public service with the protection due to private persons against illegality and arbitrariness. Just as the administrative process has called forth judicial influence, so has the administrative process influenced the legislative. Mexico participates in this universal phenomenon along with the rest of the modern democracies.

Judicial intervention leading to control of the administrative process is easily understood if viewed against the background of the liberal regime of the second half of the nineteenth and the early part of the twentieth century. The main characteristic of the liberalism of that time was the limited intervention of the State in the life of the private individual. There was, additionally, an inclination of the prevailing political theories to require that all actions by the State be subject to some control in a judicial proceeding. This was especially easy due to the fact that the administrative law was in its infancy and when it began to come forth as a specialized part of the executive function, the pattern was already well established that administrative procedure follow judicial procedure. Even where the administrative procedure managed to escape from judicial control, it was still heavily influenced by it. It is peculiar, in view of the 20th century development of greater concentration of power in the authorities designed to serve the collective interests in contradistinction to the private interests, that the protection of the private individual has survived and even increased. The principal achievement of this countermovement designed to protect the individual from the administrative agencies has been the systematization of administrative procedure, coordinating as it does the demands of the public interest with the protection of private rights and interests as far as is deemed necessary. In the process of simplifying the administrative procedure, it has necessarily drawn away from its judicial parent on many points. The important thing to be observed is that even in drawing away protections are raised to require some satisfactory settlement of a controversy, although that controversy would not be a justiciable one.

The fundamental characteristic of the administrative act is the creation of obligations or the limitation of rights of a private individual without the necessity of judicial intervention. Some cases, however, are still left to the judges. Many examples can be cited of the special administrative act following the modern pattern set forth in the preceding paragraph. Typical are the procedures contained in the Tax Code of the Republic and the other tax laws, the laws governing mines, petroleum resources, the various means of transportation and communication, the public domain and water supply. As to all of these types of property, the administrative procedure deals with the modification, the granting or the cancellation of concessions for the exploitation of public property or a public service. Further examples are contained in the laws controlling patents, trade marks, trade names and other



industrial property, and in the law regulating the expropriation of properties, either on a limited or on a permanent basis.

Even though a particular act may have all of the characteristics of a valid administrative act and may be done in accordance with the procedure contained in any one of the laws mentioned above, it may still lack effectiveness, and this lack of effectiveness may be attacked in a judicial or administrative proceeding. This has been previously mentioned when we dealt with the question of a condition precedent to an authorization or to an irregularity, such as any one of the defects pointed out regarding the capacity or the exercise of the will. Administrative law itself may not provide a means for attacking acts which have *prima facie* validity because they fulfill the formal requisites. But the Constitution sets forth the general attack which may be made on an act having any such substantive defect through the means of the *amparo*.

#### THE NATURE OF THE ADMINISTRATIVE ACT, ITS EFFICACY AND CAUSES OF ITS NULLITY

Two of the requisites for an effective administrative act have already been discussed. First, the existence of an administrative agency authorized by law to perform the kind of acts under consideration and, second, the existence of individuals capable of exercising the administrative function in the given situation.

Assuming the satisfaction of these two basic prerequisites, the next step in considering the development of a particular administrative act must be the discovery of a subject matter that can be acted on by the particular agency. The verification of the existence of a case that is subject to the administrative action may be either *ex officio* or at the request of the party. As in all other phenomena regulated by the Mexican legal system, an express statement will be found in the legislation, establishing whether the initiative is left to the competent agency or to another agency or to a party in interest. There are many examples of each of these possibilities. The law may give the power of verification of facts and evaluation of the circumstances to the agency itself. These, if found to exist in a certain case, will permit administrative action without more. Such is the normal situation in the United States, where the agency both judges the facts and arranges for the corrective measures. In other laws, it is provided that the agency must request certificates or opinions from technical or consultative agencies so that the factual situation may be independently ascertained.

In still other cases an opportunity to be heard must be granted private individuals whose vested rights will be affected by the administrative action. They may come forward to give their opinion or to present opposition to the particular act which the agency is about to undertake. Typical would be the instances where the Chambers of Commerce are consulted in connection with particular administrative measures or where, on the petition for the

registration of a patent, other holders of similar patents must come forward to present opposition if they consider that their rights will be affected.

It is frequently left to the discretion of the agency which is about to act to ask for the advice or not to ask for it; to follow it after it has been asked for, or not to follow it. There are even times when it is obliged to ask for the opinions of outside parties and must follow them. In any situation where the administrative act will effect a substantive right of a private individual in contradistinction to a mere interest, the Supreme Court has held that the administrative agency must observe the essential formalities of a recognition; that the private person must be given "the right to be heard."

An example of such a situation would be where an individual is already in a category that would allow him to use a public service, but he does not have the affirmative legal right to demand that right of user because his interest as a private individual is only protected indirectly and the public interest, the existence of the service, is protected directly. Were the administrative agency to remove him from the category even though he had never been given this specific right of user, he would be entitled to "the right to be heard."

The "right to be heard" consists of the following formalities:

1. That the party to be affected be advised of the time when the proceedings will be initiated, and that the object of the proceedings be stated, and that he be given an opportunity to present all possible arguments in defense of his rights.
2. That along with the arguments, he may offer the proofs which correspond with them, subject to reasonable control by the agency.
3. That at the termination of the administrative proceedings, he be given the opportunity to summarize his position, that is, to relate the proofs with the facts to which they refer and the totality of proofs plus facts to the applicable law; and
4. That a decision be rendered on the subject matter of the proceedings consistent with that which has been proven during it, and that the manner of execution of this decision be set forth in full accordance with the law under which it is taken.

The Supreme Court has stated that all of the above form parts of those basic rights guaranteed private persons by Article 14,<sup>12</sup> the second paragraph of which reads: "No person shall be deprived of life, liberty, property, possessions, or rights without a trial by a duly created court, in which the essential elements of proper procedure have been observed, and in accordance with laws issued prior to the act."

In his *Treatise on Administrative Law*, Professor Fraga pointed out that before 1942 the case law interpreting Article 14 had established merely that the constitutional requirement demanded that the administrative agency act

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12. *Ibid*; 2 PEASLER, *op. cit. supra* note 2, at 418.

in accordance with the procedure stipulated by the law under which it was acting. After that year, however, on the basis of a decision by the Supreme Court, the constitutional requirements of Article 14 were broadened to include the law itself. That is, it was no longer sufficient for the agency merely to comply with what was laid down in the law. The law must conform with the requisites which have previously been stated or the entire proceeding will be unconstitutional. The thesis on which this rule is based was first stated in a judgment in the *amparo* proceeding filed by the *Cia. Industrial de Guadalajara*, where the Court stated: "If the guaranty consecrated in Article 14 of the Constitution is to be of any value, then not only the administrative authorities must be obligated to comply with the provisions of the law, but the legislative authority as well, so that the laws establish an adequate procedure in which the parties may be heard. Except in those cases stipulated by the Constitution in an expropriation which is administrative in nature and in the collection of taxes, subject to the principle "solve et repete," the laws must provide for a hearing and a defense for all parties in interest in all administrative acts . . . The idea of the Constitution is that, in any trial conducted by the administrative authorities in which an individual may be deprived of private rights, he must be given the opportunity, before said deprivation, to be heard and to present an adequate defense."

Article 16<sup>13</sup> provides a further safeguard for the individual when it states: "No one shall be molested in his person, family, domicile, papers or possessions, except on the basis of a written order of the competent authority stating the legal grounds and the justification for the action taken."

This makes it obvious that the declaration of the circumstances which lead to the application of the law must be made in a specific form. Where the act is a simple one, e.g., of an individual authority, there need be no more explanation than the declaration of the knowledge of the facts, the demand for compliance with a particular law and the assertion of a public right. If, on the other hand, it is a complex act—that of a group—the applicable law by its terms will require the fulfillment of the following requisites: a statement that the members of the group were called, the fact of their meeting on a certain date and at a certain place, that a quorum was present, that a good and proper ballot was had (generally a secret ballot), that the majority, or unanimous, vote necessary in order to have a decision was arrived at, and that all of the foregoing has been recorded in proper minutes signed by the parties required to sign.

If the complex act is the result of parties acting on an equal basis, it is usually signed by all of them without any fixed order. If it is a result of the combined action of a superior and an inferior, it will first be signed by the person who suggested the particular action. A serious problem has been

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13. See note 7 *supra* and 2 PEASLEE, *op. cit. supra* note 2, at 418-419 for entire text.

created by the fact that administrative decisions are usually taken by an officer not generally familiar with the facts on which they are based. This division of responsibility between the officer who enforces the act and the person who finds the facts on which the enforcement is based makes it extremely difficult for the individual to protect himself from the administrative agency.

Before proceeding, it should be pointed out that the requirement of communication, summons or publication is really subsequent to the completion of the act itself. They have more to do with eventual efficacy of the act than with the formal validity of the act, because failure to comply with these post-action requisites may not destroy the validity of the entire proceeding. At this time it should also be mentioned that the acts controlling the parties after the principal action has been taken do not form a part of the principal act. They are other administrative actions accessory to the principal action and it makes no difference whether they are judicial, administrative, preventive, subsequent or substitutive of one form of control for another. It is pointed out, however, because the acts of control may affect the validity and at times the efficacy of the main administrative action.

As to the time when the administrative action becomes effective there are two rules. First, if the action is a simple one it produces its effect as soon as it is perfected. If the act is subject to a condition precedent, then as long as the time suspending it lasts or until the condition has been fulfilled it will not produce any effects. The same is true if any of the essential prerequisites envisioned by the law have not been fulfilled, such as enforcement action, communication or a summons.

In exceptional cases, administrative acts may be retroactive if the decision stipulates this effect, subject to the limitations contained in Article 14 which prohibits any retroactive effect if that be to the detriment of any person. Even after the act has become effective, its effects may be suspended if there is a decision by the same authority to do so or by another authority, either administrative or judicial. The suspension, however, can only take place in the express cases provided for by the law.

The efficacy of an act may also terminate with the passage of time in its natural sense. This may be where the purpose to be accomplished by the administrative action has already been fulfilled; where an expiration date was set and that date has already passed; where a condition subsequent has been realized; or due to the death, the removal from office, the abandonment of the office or the position taken by the party affected. The agency itself may revoke the particular act because of the non-compliance with another bilateral act entered into with the party or for some motive not foreseen at the time the administrative action was taken. In addition to all of these other means of terminating the efficacy of an act, there may be a declaration of nullity of the particular act in question by a superior authority.

If the action of the administrative agency becomes effective, the manifestation of that efficacy is the most interesting part of the process. As has already been stated in connection with the effect on private individuals, the nature of the act can be: (1) to prove the facts or establish their juridical nature; (2) to broaden the sphere of action allowed private individuals or to confer upon them rights; or (3) to restrict the sphere of action or impose upon the individuals certain obligations.

The most important characteristic of the effect of administrative acts is that it gives this branch of the government the power in many cases to impose duties and restrictions upon private individuals and even to coerce their performance without any necessity for judicial intervention. The government, in many cases, therefore, may take justice into its own hands.

In theory, this executive character of the administrative decision is based on the power of the state as authority due to the allegiance of the subject. It is of the essence of the need to give the government a means to fulfill the requirements of public interest entrusted to it that any obstacle be removed that may be put in the way by private interests. This power to command is accompanied by the prerogative consisting of the presumption of legitimacy which the acts have as against those rights existing in the merely private sphere.

All this serves to give the public law its exceptional nature as compared with the rights derived from the private law. But, it can be seen that the general result, the application of this public power through the administrative agency, is very similar to that reached by a judicial decision. The difference is that the former is not limited to the parties, nor does it have any effect of *res judicata* as the latter has. The administrative act is not intended to establish rights as between parties, nor does it aim at any particular minority in its definition of right. Its main purpose is to realize the needs created by the public interest. In realizing the demands of the public interest it cannot act case by case, but must establish a general rule which is highly variable. There is an exception to the effect of all administrative action, and that is where an individual is granted a specific right on the basis of the Constitution or the laws enacted thereunder. If the right is specially protected, then the government cannot affect it without complying fully with the requisites that the administrative proceeding must begin with the opportunity to hear and defend and that, if the administrative agency acts, the deprivation of the right can only be after a due and proper administrative or judicial proceeding.

The doctrine of the administrative procedure in Mexico is based, in brief, on several articles of the Constitution. Article 89, Section 1, gives the President the power to execute the laws providing, in the administrative realm, for their faithful observance. This is understood to mean that he can carry out all resolutions with the sufficiency of a

complete head of a department in its own sphere, and includes those powers which would be judicial if the judicial authority were to be divided. In Article 14, as previously mentioned, proceedings under the law are applied to control the administrative authorities. There is a limitation on this principle established in Article 17,<sup>14</sup> forbidding the individual from taking the law into his own hands or resorting to violence in the enforcements of his rights. Article 21 grants the administrative agencies the power to punish violations of police regulations with fines or detention. Since the Constitution does not specifically grant power to the federal courts to enforce the decisions of the administrative agencies when the decisions deprive a private person of one of his vested rights, it is impossible to state that this is one of the express constitutional powers. However, reading Article 14 in connection with Article 104,<sup>15</sup> we reach the following conclusion: Article 14 lays down all of the fundamental individual rights guaranteed in the Mexican Constitution. Article 104 establishes the general limits of jurisdiction of the judicial organs under the Mexican Constitution. The two taken together have been interpreted both by legislation and by the case law to mean that the law in question may establish an alternative; either a judicial proceeding or an administrative proceeding. The law may also establish the right to select either or both of them (this is done in the General Law of National Property, Articles 9 and 10). The general presumption, therefore, that the courts are available for the protection of the individual, governs in all cases except those in which the Constitution itself has indicated the absolutely administrative character of the procedure established. This it has done in the case of an expropriation of property under a power similar to the United States' eminent domain, in the matter of the means for the realization of agrarian reform (Article 27), the expulsion of undesirable aliens, or matters affecting the general health (Article 73, Section XIV), and matters of labor disputes (Article 123).

The enforcement measures available to the administrative agency are: (a) the taking of private property; (b) the sale of private property in order to pay a public obligation out of the proceeds; (c) the requiring of the doing of certain acts on behalf of the party obligated to do them; (d) direct coercion of individuals to prevent them from doing certain acts or to force them to do certain acts; and (e) the indirect coercion of individuals by means of penalties.

In addition there is the further possibility that non-compliance with an administrative order may constitute a criminal offense. The decision as to this separate matter is always one for the courts, and there must be a proper proceeding in the courts before a penalty can be imposed. This is controlled by Article 178 of the Criminal Code for the Federal District and Territories, which is applicable in criminal matters throughout the Republic.

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14. 2 PEASLEE, *op. cit. supra* note 2, at 419.

15. *Id.* at 447. This is the general judiciary clause.

It establishes a separate crime for the disobedience of a legitimate order of any authority.

A final point should be mentioned as regards the efficacy of conduct where that conduct by an administrative agency is based on its interpretation of the common law. Any such act cannot be deemed to have an effect since, as previously stated on various occasions, all administrative action must be on the basis of specific statutory authority.

In conclusion, certain further details must be stated regarding the revocation of the act and the nullity of the act from a cause other than those previously mentioned. Revocation is the unilateral administrative determination which consists of cancelling the effect of a previous act of discretionary type because it has been found to be inopportune, either in that it is no longer in the public interest or that it was never in the public interest. Such a revocation may have retroactive effect or it may be made only to operate *in futuro*. In both cases, once the revocation has been made, it becomes subject to the same constitutional limitations as any other vested right. Rights may arise as much from the revocation of an act as from a constitutional provision or a law made under it. Very frequently rights based on the revocation of an administrative termination may become a proprietary obligation that can be enforced against the government.

It is impossible, within the brief compass of this article, to deal with all of the aspects of the very important matter of nullity. The general principle governing the matter of nullity may be stated as follows: When an action is taken to realize something of benefit to the public interest, different criteria must be used for judging the validity of the act than would be used in the matter of testing the validity of a private legal act, since in the latter category the sole object is the satisfaction of private interests. The reasoning which is applied in this field, unfortunately, has oftentimes been careless and haphazard. The results are frequently anarchical. Rather than establishing one rule as regards the nullity of an administrative act, many possible explanations for this phenomenon have been given.

The validity of an act consists in its capability of producing the effect which the law attributes to it; the nullity, which is the reverse of this, consists in the total or partial impossibility of its exercising its true legal role.

Based in general on the notions contained in the civil law, but without expressly following them, three kinds of nullity are found. The first type of nullity is that of invalidity. This, as previously explained, consists of the total absence of an element essential to the validity of the act. It may be the subject, the object, the expression or declaration of the will, the motivation or a defect in the form of the act itself. Its consequence is to bring forth something which appears to exist but does not exist in reality. An appearance of an existing act results in its consideration and discussion, but this mere resemblance is not sufficient to require a declaration of nullity.

As soon as the lack of validity is discovered (and any interested party may begin the proceeding) its incapacity to produce a legal effect is obvious, and it cannot be made valid either by confirmation or prescription.

Examples of this type of invalidity would be if the author of the act is a usurper, lacking in constitutional authority; if there has been no declaration of will or the declaration is made by an insane individual; if the object of the act cannot exist or is impossible of fulfillment; if there is nothing intended by the act; or if one of the solemn formal requirements was omitted.

The second type is absolute nullity. This occurs when either the act itself or the purpose of the act is expressly or impliedly prohibited by law as contrary to public policy. These acts will produce their effect until the nullity is declared. Any interested party may invoke the proceeding to declare the nullity and upon such a declaration all effects of the act are cancelled retroactively. This type of nullity also cannot be cured by confirmation or prescription.

Finally, there is the category of relative nullity. This is the result of a defect which does not necessarily go to the essence of the act. The defect may be such as a material error, deceit, duress or something which would go to the will of the parties, and it cannot consist of anything other than one of the less solemn parts of the formal requirements. These acts may be declared null and void only at the request of the persons that the law deems to be the victims of the particular defect. In the event that they are nullified, such nullification will be retroactive, but they are capable of being confirmed by the elimination of the defect or made valid by the running of the time necessary for the prescription of the attack.

It is the opinion of this writer that there should be no differentiation between invalidity and absolute nullity. If the juridical act is one that apparently fulfills the requisites of the law, the absolute lack of capacity means that the act does not exist in reality and, therefore, while it does have the appearance, both of the cases effectually fall within the category of absolute nullity.

The nullity of administrative acts creates a serious problem, particularly in connection with the determination of the competence of the authority to declare nullity, the time when the nullity may be declared and the retroactive destruction of rights based on the act which has been declared null and void.

The general principles established by the legislation and the court decisions is that the nullification may be made either by the same authority or its next superior in the administrative hierarchy, with the exception of the administrative tribunals. This is particularly true where the nullity is based on the fact that the act violates public policy. At times, however, when a question of the nullification of the decision favorable to a private



individual arises, the law requires that this case be submitted either to an administrative or to a judicial tribunal.

Private persons are in a different situation from the public authorities. The administrative law does not have as its main purpose the protection of private interests. Therefore, in general, the period of time within which the nullification proceeding may be brought on behalf of a private person is limited. The statute of limitations is usually a very short one—so short as to cancel the right of petition for nullification within a peremptory term.

It must be stated that the retroactive nullification of acts either absolutely void or voidable is not an absolute right. This also is due to the fact that the public interest intervenes. Retroactive nullification may not, even to protect legitimate interests of the individual, be granted. The grant of nullification depends on an affirmative declaration contained in the law and its reasonable interpretation by the courts through their case decisions. For example, where there are acts performed by *de facto* officers, the public interest may supervene the private interest, and the *de facto* character of the officers may not be pointed out by the private interest in order to annul their act.

In conclusion, therefore, it should be stated that in the field of establishing the nullity of administrative procedure, the general trend of the development of Mexican administrative law is again shown. The administrative law is the servant of the public interest. A reasonable balance has been struck to protect the individual rights guaranteed in the Constitution, and the courts have extended the *amparo* proceedings so that protection is real rather than theoretical. Beyond the narrow limits of this constitutional protection, however, the public interest is usually preferred to the private interest.

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We regret that several typographical errors appeared in Morrison, *Maintenance and Cure and Farrell v. United States*, in 6 MIAAMI L.Q. 168 (Feb. 1952).

Page 176, n. 46, should read, ". . . where a seaman engaged upon his own personal affairs, and there injured, could not recover maintenance and cure."

The last paragraph on page 177 should begin, "It is here interesting to note that in 1937—one year before *Collins*—in *Hogan v. S.S. J. M. Danziger*.<sup>51</sup> . . ."

The first sentence of the last paragraph on page 185 should read, "Now can this be taken to say that the result would have been the same had Farrell been two days, or two weeks, overleave rather than two hours?"

The fourth sentence in the first full paragraph on page 186 should read, "In short, the provision is aimed at *injured* seamen, but not necessarily seamen who have been cursed with an incurable illness."

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